IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1387 of 2006

BMC, through the General Manager
BEST Undertaking .. Petitioner

versus

Mr.Balkrishna S. Upaskar .. Respondent

...

Mr.S.K. Talsania i/b Crawford Bailey & Co. for the petitioner.

Mr.S.S. Chowdhary for the respondent.

CORAM : D.G. KARNIK, J

DATED : 5th June 2006.

P.C.:

1. The labour court has recorded a finding of fact that the enquiry was not fair and proper. In view of this finding, petitioner has an opportunity of adducing evidence and justifying the order of termination before the labour court by alleging appropriate evidence of the alleged misconduct. Instead of doing that, the petitioner chose to file a

revision which has been dismissed.

2. Learned counsel for the petitioner states that the findings recorded by the labour court and the revisional authority are contrary to the decisions of the division bench of this Court rendered in Writ Petition 2554 of 1993 to which the petitioner was a party. Learned counsel for the petitioner submits that whether the disciplinary authority himself can act as an enquiry officer has been answered in the affirmative by the division bench and therefore the petition needs to be admitted and allowed though the judgement of the division bench in Writ Petition no.2554 of 1993 was not cited before any of the Courts below.

3. The impugned order was passed on 31st August 2005 and the present petition has been filed after lapse of 7 months on 27th March 2006. The delay of 7 months, in the facts and circumstances of the case appears to be unreasonable. In the petition, delay has not been explained at all.

4. In my view, no prejudice would be caused to the petitioner by the impugned order because the petitioner has an opportunity of justifying the order of termination by adducing evidence of the alleged

misconduct. On the other hand, by admitting a petition on account of the own lapse of the petitioner of not citing a judgement which was rendered in a matter in which it was a party and filing the petition after a lapse of 7 months the respondent, who is a workman, is likely to suffer. In the circumstances, I decline to entertain the petition on the ground of delay.

5. Petition is accordingly dismissed.

(D.G. KARNIK, J)